A **REMA SIMBAN**

v.

BUJANG JUHAILI & ANOR

B HIGH COURT SABAH & SARAWAK, BINTULU
JOHN KO WAI SENG JC
[SUIT NO: BTU-22-3-2011]
5 JULY 2012

C ***CIVIL PROCEDURE:*** *Jurisdiction - Civil and Syariah Courts - Muslim inheritance and administration of estate - Suit filed in civil court - Determination of beneficiary - Whether issue a question of law - Whether Syariah High Court declared plaintiff as beneficiary of estate - Whether matters in issue fell within jurisdiction of civil court - Whether* D *suit premature - Whether to be struck out - Rules of the High Court 1980, O. 14A, O. 18 r. 19(1) - Syariah Courts Ordinance 2001 (Sarawak), s. 10(3)(b)*

ISLAMIC LAW: *Jurisdiction - High Court - Muslim inheritance and* E *administration of estate - Determination of beneficiary - Whether matters in issue fell within jurisdiction of civil court - Whether Syariah High Court declared plaintiff as beneficiary of estate - Whether abuse of court process - Federal Constitution, art. 121(1A) - Syariah Courts Ordinance 2001 (Sarawak), s. 10(3)(b)*

F The deceased, a Muslim, died intestate and left two parcels of land ('the estate'). The first defendant, who was appointed as the administrator of the estate, also claimed rights to inherit from the estate. After transferring the estate to himself, the first defendant charged the estate to the second defendant who was a non-G Muslim. The plaintiff averred that she was the deceased's heir and beneficiary, and in the circumstances claimed for inheritance and administration over the estate, and sought the court to determine her status as a beneficiary and her share to the estate. The defendants, however, applied to strike out the plaintiff's action H under O. 14A, O. 18 r. 19(1) and O. 92 r. 4 of the Rules of the High Court 1980 ('RHC 1980'). It was the defendants' contention that it was an abuse of the court's process for the plaintiff to file the action in the present court as the subject matter of the claim concerned Islamic law. It was submitted that I the court possessed no jurisdiction and that jurisdiction strictly lay with the Syariah High Court by virtue of art. 121(1A) of the

Federal Constitution read with s. 10(3)(b) of the Sarawak Syariah Courts Ordinance 2001. Relying on O. 14A of the RHC 1980, the defendants further submitted that the issue was a question of law which was suitable for determination by the court without full trial and that the determination of such question would finally determine the entire cause or matter between the parties. The main issue that arose was whether the matters in issue were within the jurisdiction of the court.

Held (allowing defendants' application and striking out suit):

(1) The matter is suitable to be dealt with summarily under O. 14A of the RHC 1980 since a decision on the question of law as to which court has the jurisdiction to decide on the plaintiff's claim as a beneficiary would determine the present suit. (para 14)

(2) The court did not have any jurisdiction on the division, inheritance and the entitlement and share of a beneficiary in the estate of a deceased Muslim. Article 121(1A) of the Federal Constitution prescribes that the court has no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts. By virtue of s. 10(3)(b)(vii) and (ix) of the Syariah Courts Ordinance 2001, the Syariah High Court of Sarawak is conferred with the express jurisdiction to hear and determine actions and proceedings relating to division, inheritance and the entitlement and share of a beneficiary in the estate of a deceased Muslim. Whether the plaintiff was a beneficiary of the estate and what her share was had to be submitted for the adjudication of the Syariah High Court of Sarawak and not within the purview of this court. (paras 20, 24 & 28)

(3) Since the plaintiff had not been declared a beneficiary of the estate by the Syariah High Court, her action was premature for lack of *locus standi*. The court would have the jurisdiction to entertain the plaintiff's claim against the defendants for the rest of the reliefs which were within the jurisdiction of the court when the plaintiff could establish herself as a beneficiary before the Syariah High Court. (paras 39, 42 & 43)

Case(s) referred to:

Abdul Shaik Md Ibrahim & Anor v. Hussein Ibrahim & Ors [1999] 3 CLJ 539 HC ***(refd)***

Barkath Ali Abu Backer v. Anwar Kabir Abu Backer & Ors [1997] 2 CLJ (Supp) 295 HC ***(refd)***

Bato Bagi & Ors v. Government of the State of Sarawak [2011] 6 CLJ 387 CA ***(refd)***

Daud Mamat & Ors v. Majlis Agama Islam/Adat & Anor [2001] 2 CLJ 161 HC ***(refd)***

Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd [2007] 6 CLJ 741 CA ***(refd)***

Kaliammal Sinnasamy v. Majlis Agama Islam Wilayah Persekutuan (JAWI) & Ors [2011] 2 CLJ 165 CA ***(refd)***

Latifah Mat Zin v. Rosmawati Sharibun & Anor [2007] 5 CLJ 253 FC ***(refd)***

Lim Chan Seng lwn. Pengarah Jabatan Agama Islam Pulau Pinang & 1 Kes Yang Lain [1996] 3 CLJ 231 HC ***(refd)***

Majlis Agama Islam Pulau Pinang lwn. lsa Abdul Rahman & Yang Lain [1992] 3 CLJ 1675; [1992] 1 CLJ (Rep) 201 SC ***(refd)***

Majlis Ugama Islam Pulau Pinang Dan Seberang Perai v. Shaik Zolkaffily Shaik Natar & Ors [2003] 3 CLJ 289 FC ***(foll)***

Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal [2003] 4 CLJ 337 CA ***(refd)***

Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (Perkim) Kedah & Anor [1999] 2 CLJ 5 FC ***(refd)***

Legislation referred to:

Federal Constitution, art. 121(1)(b), (1A)

Rules of the High Court 1980, O. 14A, O. 18 r. 19(1)(a), O. 92 r. 4

Syariah Courts Ordinance 2001 (Sarawak), s. 10(3)(b)(vii)(ix)

For the plaintiff - Satinder Singh Sandhu; M/s Sandhu & Co

For the defendants - Wong Woan Sii; M/s Ling & Wong Advocs

Reported by Najib Tamby

JUDGMENT

John Ko Wai Seng JC:

Application

[1] The defendants are applying for striking out under O. 14A, O. 18 r. 19(1) & O. 92 r. 4 Rules of the High Court 1980 of the plaintiffs suit. The plaintiff, a Muslim is claiming by this suit in this court for an inheritance and administration of the estate of a

deceased who is a Muslim. The estate is being administered by the lst defendant, another Muslim under letters of administration for an intestate granted under civil law. The rest of the reliefs being claimed in this suit include those against a non Muslim, the 2nd defendant who had taken charges on the two parcels of land of the estate.

[2] The defendants pose this question of law under O. 14A RHC 1980 for the court's decision:

Whether the matters in issue are within the jurisdiction of this Honourable Court?

[3] Upon reading:

(a) Reamended writ of summons and statement of claim;

(b) 2nd defendant's defence;

(c) 1st defendant's defence;

(d) Reply to the 1st defendant's defence;

(e) Defendants' summon in chambers dated 28 February 2012 ("application");

(f) 1st defendant's affidavit in support affirmed on 28 February 2012 ("support affidavit 1");

(g) 2nd defendant's affidavit in support affirmed on 28 February 2012 ("support affidavit 2"); and

(h) Plaintiff's affidavit in opposition affirmed on 16 March 2012 ("opposing affidavit";

and upon reading:

(a) Defendants' submission;

(b) Plaintiff's submission; and

(c) Defendants' reply submission;

the court finds as follows:

Facts of Case

[4] The late Simban bin Endang ("deceased") who had died intestate in August 1959 was a Muslim before and up to his death.

The estate of the deceased ("estate") comprised *inter alia* of:

(a) Lot 801 Block 8 Selezu Land District with an area of 2.85500 hectares more or less and situate at Sungai Selezu, Sebuah; and

(b) Lot 803 Block 8 Selezu Land District with an area of 4,860 square metres more or less and situate at Sungai Selezu, Sebuah.

(Individually, "Lot 801" and "Lot 803" collectively the "Lands").

The plaintiff who is also a Muslim claims to be the heir and beneficiary of the estate and as beneficiary is claiming to be entitled to inherit the lands from the estate.

The 1st defendant another Muslim also claims to have rights to inherit from the estate had been appointed as the administrator of the estate by obtaining the grant of the letters of administration from the Probate Office on the 5 August 2009.

The 1st defendant had then transferred the lands to himself *vide* Application for Transmission Instrument N.L30812009 at the Bintulu Land Registry Office on 23 November 2009.

The 1st defendant had in early 2010 charged the lands to the 2nd defendant *vide* Memoranda of Charge Instruments Nos. L308/2010 and L1423/2010 to secure sums for his own benefit and use ("charges").

In 17 August 2010, 219.5 square metres of Lot 801 was compulsorily acquired and resumed *vide* Instrument No. L4181/2010 by the State Government with compensation paid to the 1st defendant.

Plaintiff's Suit

[5] From the indorsement of claim in this suit, this is the relevant summary of what the plaintiff had sought from this court in para. 13 of the reamended statement of claim:

(1) against the defendants:

(a) a declaration that lands form part of the estate;

(b) a declaration that the 1st defendant holds the lands in trust for the plaintiff as beneficiaries of the estate;

(c) a declaration that charge on Lot 803 is null and void.

(2) against the 1st defendant:

(a) an order for distribution of the estate ... in accordance with Islamic Muslim law of inheritance ...;

(b) an account for Government compensation from Lot 801;

(c) an account of monies received from the charges;

(d) an order for payment ... of the estate ... in accordance with Islamic Muslim law of inheritance ...;

(e) all other necessary accounts and direction.

1st Defendant's Defence

[6] The 1st defendant's defence was filed without prejudice to the pending application to strike out the action.

By para. 1 of his defence, the 1st defendant disputes and denies that the plaintiff is the heir and beneficiary of the estate.

By para. 11 of his defence, the 1st defendant challenges the jurisdiction of this court on any matter or issue arising from Islamic law including any claim or inheritance from the estate by the plaintiff.

2nd Defendant's Defence

[7] The 2nd defendant defence is that it is not a party or privy to any alleged incident of misconduct of the 1st defendant in administering the estate.

Further the 2nd defendant claimed to have acted in good faith in its ordinary course of business as a *bona fide* lender for consideration and without notice of any breach in dealing with the 1st defendant in the creation of the charges on the lands.

Suitability of O. 14A

[8] The defendants contend as the ground for the application that the subject matter in issue being the a claim for a Muslim inheritance and administration of the estate of a Muslim is within

A the jurisdiction of the Syariah High Court, and this court has no jurisdiction by virtue of art. 121(1A) of the Federal Constitution read with s. 10(3)(b) of the Sarawak Syariah Courts Ordinance 2001, and hence it is an abuse of process for the plaintiff to file this action.

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[9] Learned counsel for the defendants submitted that this issue is a question of law which is suitable for determination by this court pursuant to O. 14A RHC 1980 without the full trial of the action and the determination of such question will finally C determine the entire cause or matter or any claim or issue therein.

[10] Learned counsel for the plaintiff submitted that there are serious dispute of facts and/or no sufficient agreement of facts, making this case unsuitable for determination *via* an O. 14A procedure and reiterated that the court, and not the Syariah D Court, has jurisdiction to hear the case.

[11] Order 14A RHC 1980 reads:

> (1) The Court may upon the application of a party or of its own E motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that -
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> (a) such question is suitable for determination without the full trial of the action; and
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> F
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> (b) such determination will finally determine the entire cause or matter or any claim or issue therein.
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> (2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.

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[12] In *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal* [2003] 4 CLJ 337 Mohd Noor Ahmad JCA observed that (p. 351a):

> In a nutshell, the Order enables the court to determine any H question of law or construction of document where it appears to the court that such question is suitable for determination without the full trial of the action and such determination will finally determine the entire cause or matter or any claim or issue therein.

I Mohd Noor Ahmad JCA later added (*Ibid* p. 364h):

> In our view, even if the case appears to be or is complicated it does not mean that the court must shun away from considering the applicability of O. 14A and O. 33 r. 2 in relation to the

> questions of law posed which are clear and definite and the issues are clear cut. Real and serious attempt must be made to identify the material facts pleaded which are obviously undisputed or which should not have been disputed and then to apply the relevant rule to the facts as found. There are authorities in support of the proposition that merely because an issue of law takes a little longer to determine does not mean that the court should refuse the application (see *Korso Finance Establishment Anstalt v. John Wedge, supra*).

See also *Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd* [2007] 6 CLJ 741 at paras. 130 and 134 p. 783 on the usage of facts from the affidavits filed to support the questions of law to be determined by the court.

[13] In *Bato Bagi & Ors v. Government of the State of Sarawak* [2011] 6 CLJ 387, Sulaiman Daud JCA had observed this (at para. 17):

> It is well settled that an issue is only suitable for determination under O. 14A if the points of law to be determined thereunder have been stated in clear and precise terms, and the facts disclosed by the pleadings and affidavit evidence are sufficient for the court to make such determination which would be final as to the entire cause or matter. (see *Allen v. Gulf Oil Refining Ltd* [1980] QB 156, and *Seloga Jaya Sdn Bhd v. UEM Genisys Sdn Bhd* [2008] 2 CLJ 686).

[14] The court having considered the undisputed facts and the issue of law raised on jurisdiction of the courts agrees with learned counsel for the defendants that the matter is suitable for being dealt with summarily under O. 14A RHC 1980 as a decision on the question of law as to which court has jurisdiction to decide on the claim of the plaintiff as a beneficiary will determine this suit.

Jurisdiction Over Muslim Estate Disputes

[15] Learned counsel for the defendants submitted that disputes over Muslim estates in Sarawak are within the jurisdiction of the Syariah High Court, and that this court has no jurisdiction.

[16] Learned counsel for the plaintiff on the other hand submitted that since the estate is already under civil law administration, the plaintiff is applying to this court by her declarations to bring back the lands unencumbered which affects a non Muslim and money into the estate first and with the rest of the reliefs which only this court can give and thereafter she would apply to the Syariah Court for the actual distribution in accordance with Muslim law.

[17] The court will now ascertain the respective jurisdiction of this court and the Syariah High Court of Sarawak on the relevant issues raised in this suit for decision and relief.

The Law: Administration Of Deceased's Estate

[18] The court will refer to the relevant law governing the administration of deceased Muslim estates:

(a) Article 121(1) and (1A) of the Federal Constitution art. 121(1)(b) and (1A) of the Federal Constitution has provided:

> **121. Judicial Power of Federation**
>
> (1) There shall be two High Courts of co-ordinate jurisdiction and status, namely -
>
> (a) one in the States of Malaya, ...; and
>
> (b) one in the States of Sabah and Sarawak, which shall be known as the High Courts in Sabah and Sarawak ...;
>
> (1A) The courts referred to in clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.

[19] On the effect of art. 121(1A), Suriyadi Halim Omar J (as he then was) in *Daud Mamat & Ors v. Majlis Agama Islam/Adat & Anor* [2001] 2 CLJ 161 stated (at pp. 166i - 167d):

> Come A 704 of 1988, effective on 10 June 1988, the promulgation of art. 121(1A) of the Federal Constitution, ousted the High Courts in Malaya and Sabah and Sarawak, over matters which fall within the jurisdiction of the Syariah courts. There is no shortage of cases that have acquiesced to this provision, among them *Dalip Kaur v. Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor* [1991] 3 CLJ 2768; [1991] 1 CLJ (Rep) 77. Under List 11-State List (art. 74; 95B(1)(a)), the Federal Constitution has succinctly delineated the powers of the Syariah court, in short over persons professing the religion of Islam. The Supreme Court in *Mohamed Habibullah Mahmood v. Faridah Dato' Talib* [1993] 1 CLJ 264 clearly established that:
>
> > The intention of Parliament by art. 121(1A) of thd Federal Constitution is to take away the jurisdiction of the High Courts in respect of any matter within the jurisdiction of the Syariah Court.

> The legislation of art. 4 of the Constitution, which entrenches the supreme position of the Federal Constitution, merely reconfirmed the lofty position of the above art. 121(1A). With the latter article in existence any jurisdictional conflicts, once and for all, between the civil and the Syariah Courts is avoided. Taking the matter a step further and from a different perspective, the religious court's power, in the same vein similarly cannot be invoked against non-Muslims (see *Ng Siew Pian lwn. Abd Wahid Abu Hassan, Kadi Daerah Bukit Mertajam & Satu Yang Lain* [1993] 1 CLJ 391).

[20] It is clear that from art. 121(1A) of the Federal Constitution that this court shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts. The court will take cognisance of what Hashim Yeop Sani CJ (Malaya) opined in *Dalip Kaur*'s case *(supra)*:

> The new clause 1A of article 121 of the Constitution effective from 10 June 1988 has taken away the jurisdiction of the civil courts in respect of matters within the jurisdiction of the Syariah Courts. But that clause does not take away the jurisdiction of the civil court to interpret any written laws of the States enacted for the administration of Muslim law.

[21] The court stands guided by the case of *Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (Perkim) Kedah & Anor* [1999] 2 CLJ 5, where Mohamed Dzaiddin FCJ, as he then was, in the Federal Court had observed (at p. 22f-g):

> Whilst we agree with the approach adopted by Abdul Hamid J following *Habibullah*, that when there is a challenge to jurisdiction the correct approach is to look at the State Enactments to see whether or not the Syariah courts have been expressly conferred jurisdiction on a given matter, ...

[22] This was reiterated in *Latifah Mat Zin v. Rosmawati Sharibun & Anor* [2007] 5 CLJ 253 by Abdul Hamid Mohamad FCJ (as he then was) when he stated (at p. 278H):

> [45] The point to note here is that both courts, civil and syariah, are creatures of statutes. Both owe their existence to statutes, the Federal Constitution, the Acts of Parliament and the State Enactments. Both get their jurisdictions from statutes ie, constitution, federal law or State law, as the case may be. So, it is to the relevant statutes that they should look to determine whether they have jurisdiction or not. Even if the syariah court does not exist, the civil court will still have to look at the statutes to see whether it has jurisdiction over a matter or not. Similarly,

even if the civil court does not exist, the syariah court will still have to look at the statute to see whether it has jurisdiction over a matter or not. *Each court must determine for itself first whether it has jurisdiction over a particular matter in the first place, in the case of the syariah courts in the States, by referring to the relevant State laws* and in the case of the syariah court in the Federal Territory, the relevant Federal laws. (emphasis added)

[23] The court will next have to look at what the Laws of Sarawak on what jurisdiction has been conferred to the Syariah Courts of Sarawak to the exclusion of this court.

(b) Syariah Courts Ordinance 2001 (Laws of Sarawak, Chapter 42) s. 10(3)(b)(vii) and (ix)of the Syariah Courts Ordinance 2001 (Laws of Sarawak, Chapter 42) states:

10(3) The Syariah High Court shall -

(b) in its civil jurisdiction, hear and determine all actions and proceedings if all the parties to the actions or proceedings are Muslims and the actions or proceeding relate to -

(viii) division and inheritance of testate and intestate property;

(ix) the determination of the persons entitled to share in the estate of a deceased Muslim or the shares to which such persons are respectively entitled;

[24] Again it is clear to this court that s. 10(3)(b)(vii) and (ix) of the Syariah Courts Ordinance 2001 confers the Syariah High Court of Sarawak with the express jurisdiction to hear and determine actions and proceedings relating to division, inheritance and the entitlement and share of a beneficiary in the estate of a deceased Muslim.

[25] This means that this court does not have any jurisdiction on the issues on the division, inheritance and the entitlement and share of a beneficiary in the estate of a deceased Muslim.

Application Of Syariah Law: Estate Matters

[26] The plaintiffs claim to be a beneficiary and inheritance rights to the deceased estate based on para. 1 of the reamended statement of claim is being challenged by paras. 2, 4(15) and 5 of the 1st defendant's defence.

[27] The reliefs claimed in para. 13 (1)(b) and (2)(a) & (d) of the reamended statement of claim is actually for the division, distribution of the inheritance and ascertaining the plaintiff as a beneficiary and her share entitlement as a beneficiary in the estate of the deceased. All these matters according to s. 10(3)(b)(vii) and (ix) of the Syariah Courts Ordinance 2001 falls within the jurisdiction of the Syariah High Court of Sarawak. Since the Syariah High Court of Sarawak has been conferred jurisdiction over all Muslims on all matters pertaining to the division and inheritance of intestate property including who are beneficiaries and their share entitlement, this court has no jurisdiction on the matters raised in issue in this suit.

[28] This means that whether the plaintiff is a beneficiary of the estate and what is her share has to be submitted for the adjudication of the Syariah High Court of Sarawak and not within the purview of this court.

Subject Matter Approach

[29] Learned counsel for the plaintiff submitted that the declaratory orders sought against the defendants, one of whom is a non Muslim pursuant to prayers (1), (b), (c) and (d) of the reamended writ of summons and statement of claim are solely matters within the jurisdiction of the Civil Courts and the Syariah Courts have no jurisdiction or power to grant declarations, such as those sought in the instant case. In support, he cited the cases of *Majlis Agama Islam Pulau Pinang v. lsa Abdul Rahman & Yang Lain* [1992] 3 CLJ 1675; [1992] 1 CLJ (Rep) 201 and *Barkath Ali Abu Backer v. Anwar Kabir Abu Backer & Ors* [1997] 2 CLJ (Supp) 295 which looked at the relief sought or "remedy prayed for approach" to determine if the Syariah Court was vested with jurisdiction.

[30] Learned counsel for the defendants submitted that such approach of taking "the remedy prayed for" is no longer the law because the courts now take the "subject matter" approach or the 'implication approach' for considering the issue of jurisdiction, ie, whether or not the subject matter is within the competence of the State Legislature to enact in giving jurisdiction to the Syariah Courts. This "subject matter" approach had been adopted in the cases of *Lim Chan Seng lwn. Pengarah Jabatan Agama Islam Pulau Pinang & 1 Kes Yang Lain* [1996] 3 CLJ 231, *Abdul Shaik Md Ibrahim & Anor v. Hussein Ibrahim & Ors* [1999] 3 CLJ 539 and

Majlis Ugama Islam Pulau Pinang Dan Seberang Perai v. Shaik Zolkaffily Shaik Natar & Ors [2003] 3 CLJ 289 FC to avoid the undesirable effect of the remedy approach which fostered the tailoring or manipulating of the prayer for a remedy to be changed so as to take away the original jurisdiction of the Syariah Courts in favour of the Civil Court.

[31] According to *Shaik Zolkaffily Shaik Natar (supra)* Haidar Mohd Noor CJM in the Federal Court when affirming *Abdul Shaik Md Ibrahim's* case *(supra)* and overruling *Isa Abdul Rahman*'s case *(supra)* had this to say (at p. 300a):

> In Abdul Shaik bin Md Ibrahim, Abdul Hamid Mohamad J held that the case is not removed from the jurisdiction of the syariah court merely because the plaintiffs have prayed for the remedy of declarations. *His Lordship did not follow Isa Abdul Rahman but followed Soon Singh which adopted the 'subject matter' approach rather than the 'remedy prayed for' approach*. (emphasis added)

[32] The court is bound by the decision of the Federal Court in *Shaik Zolkaffily Shaik Natar*'s case *(supra)*, the fact that the plaintiff is seeking declaratory reliefs in para. 13 of the reamended statement of claim does not oust the Syariah High Court's jurisdiction and the court should apply the "subject matter" approach in this suit to see whether the court has jurisdiction to give the reliefs prayed for by the plaintiff.

[33] Applying *Shaik Zolkaffily Shaik Natar*'s case *(supra)* and the "subject matter" approach and contrary to learned counsel for the plaintiffs reply submission, the court will find that the plaintiff cannot establish that she is a beneficiary of the estate and for a share by this suit in this court by praying for them through the declaratory reliefs implicit from the granting of para. 13(1) and (2) reamended statement of claim in particular under para. 13(1)(b) and (2)(a) & (d) thereof. These matters fall squarely within the jurisdiction of the Syariah High Court (See *Latifah Mat Zin*'s case *(supra)* at paras. 54-56).

[34] The plaintiffs pleading in para. 13(2)(a) and (d) of the reamended statement of claim for distribution and payment in accordance with Islamic Muslim law of inheritance is a futile attempt to cloak this court with the jurisdiction which belongs to the Syariah High Court under s. 10(3)(b)(vii) and (ix) of the Syariah Courts Ordinance 2001.

[35] The plaintiff has to establish herself as a beneficiary of the estate and her share entitlement through the Syariah High Court, as this court does not have jurisdiction to entertain this part of the claim in her suit. The court finds that this part of her claim for reliefs that are within the Syariah High Court's jurisdiction ought to be struck out from this suit under O. 18 r. 19 and O. 92 r. 4 RHC 1980.

Locus Standi: Rest of the Reliefs

[36] Now we come to deal with the rest of the plaintiffs claim for the reliefs in para. 13(1) and (2) of the reamended statement of claim against the defendants, *inter alia* for declarations for administration, setting aside the charges, accountability for money received, and the other related reliefs including for the distribution of the estate which are not matters within the jurisdiction of the Syariah High Court. The court will find that the rest of the reliefs claimed by the plaintiff against the defendants which includes a non Muslim are matters that falls squarely within the jurisdiction of this court.

[37] On the next step to take, the court is guided by the approach taken by Suriyadi Halim Omar J (as he then was) in *Daud Mamat*'s case *(supra)*:

> Before delving into the technical matters, I need to resolve a procedural or "the sufficiency of interest" factor first. That being so, a perusal of the facts becomes exceedingly necessary.

[38] The court needs to ascertain the interest of the plaintiff and her entitlement to the rest of the reliefs claimed in the light of the earlier finding that the court has no jurisdiction to declare the plaintiff as a beneficiary of the estate. On the procedural aspect the court will refer to *Latifah Mat Zin*'s case *(supra)* where Abdul Hamid Mohamad FCJ stated:

> [49] Until the problem is solved by the legislature, it appears that the only way out now is, *if in a case in the civil court, an Islamic law issue arises, which is within the jurisdiction of the syariah court, the party raising the issue should file a case in the syariah court solely for the determination of that issue and the decision of the syariah court on that issue should then be applied by the civil court in the determination of the case.* (emphasis added)

[39] Applying this to the facts here, in the order of things, we find that the plaintiff claims that she is a beneficiary of the estate but has yet to file a case to establish this through the Syariah High Court. It is clear in such a case what the role and stand of this court is from the observation in *Kaliammal Sinnasamy v. Majlis Agama Islam Wilayah Persekutuan (JAWI) & Ors* [2011] 2 CLJ 165, by Abdul Wahab Patail JCA:

> [22] To our minds in a dual judicial system anywhere, there will always occur occasions when there appear to be dissonance between the two systems. The civil court seeks to resolve such dissonance where possible by applying an interpretation so that there is no conflict, or *to ensure that the grievances be first brought before the court of competent jurisdiction to consider a rule upon it*. It is not the proper course to reject the court of competent jurisdiction and instead go to the Civil Court. (emphasis added)

[40] If the plaintiff is not recognised yet by Syariah law as a beneficiary of the estate, a question immediately arises on "the sufficiency of interest" or her *locus standi* or right to institute an action in this court over the administration of the estate against the 1st defendant as its duly appointed administrator and against the 2nd defendant for taking the charges on the land from the estate.

[41] If the court accepts the submission of learned counsel for the plaintiff that the plaintiff can apply later to the Syariah Court after getting her declaratory orders here, we may end up with an untenable situation. What if the plaintiff succeeds in her claim to get the reliefs in this court against the defendants, but that the Syariah Court subsequently rules that she is not a beneficiary of the estate. In the meantime the orders made by this court against the defendants at the behest of a volunteer without any interest but with good intentions for the estate would amount to a wrongful interference with the legitimate rights of the defendants.

[42] The court will find that because the plaintiff has not been declared a beneficiary of the estate by the Syariah High Court, the rest of the reliefs prayed for in para. 13(1) and (2) of the reamended statement of claim becomes premature by lack of *locus standi*. This accords with what Abdul Hamid Mohamad FCJ stated in *Latifah Mat Zin*'s case *(supra)* that after resolving the civil

jurisdiction matters in the civil courts like getting out the letters of administration (for Sarawak from the Probate Office) or what properties are part of the estate that falls to be decided by civil law (at para. 67):

> Once that is determined, and if it forms part of the estate of the deceased, then the syariah court should proceed to determine the portion to which each beneficiary is entitled to, according to "faraid". That order is then filed in the civil court, which will give effect to it. Of course, this is very cumbersome. But, that is the only way out under the current law.

[43] In the order of things, until such time the plaintiff can establish herself as a beneficiary before the Syariah High Court can this court have jurisdiction to entertain her claim against the defendants for the rest of the reliefs which are within the jurisdiction of this court.

[44] In *Latifah Mat Zin*'s case *(supra)* Abdul Hamid Mohamad FCJ had cause to lament on the state of the law resulting in multiplicity of action:

> [80] As a result, jurisdictional problems that had not been envisaged have arisen. Some require double proceedings, one in the civil court and another in the syariah court before a final decision may be made. This causes delay and incurs unnecessary expenses.

[45] The court finds that to suspend these proceedings while she applies to the Syariah Court to be declared a beneficiary is an option open to the court. However this firstly will be sanctioning her attempt to apply wrongly to this court implicitly to be recognised or made a beneficiary through her declaratory orders thereby usurping jurisdiction; and secondly, under the circumstances in order not to litter the cause list with stayed proceedings, the court will prefer the neater solution to find that since the plaintiffs suit does not disclose a reasonable cause of action it should be struck out under O. 18 r. 19(1)(a) RHC 1980. It also becomes an abuse of process and under the inherent jurisdiction of the court (O. 92 r. 4 RHC 1980) it ought to be struck out.

A

Conclusion

[46] The court will answer the question posed under O. 14A RHC 1980 by confirming that the court has no jurisdiction to decide whether the plaintiff, a Muslim is a beneficiary and what her share entitlement is in the estate of the intestate deceased, a Muslim which are matters within the jurisdiction of the Syariah High Court.

B

C

[47] In answering this question by declining jurisdiction because the plaintiff is not a beneficiary of the estate recognised by Syariah law or an interested party will lose her *locus standi* to sue the defendants for the rest of the reliefs prayed for in this suit. With the result that the plaintiffs suit does not disclose a reasonable cause of action or becomes an abuse of process.

D

[48] The court will strike out the plaintiffs action with costs to the defendants.

E

F

G

H

I